

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government → The bill increases the amount above retail price for which specified tickets may be resold without committing a second degree misdemeanor.

B. EFFECT OF PROPOSED CHANGES:

Ticket scalping is commonly defined as the reselling of tickets at a price higher than the established value.¹ Legislation limiting or prohibiting ticket scalping has been criticized as limiting free enterprise. Commentators argue that once a person purchases a ticket, that person should be able to resell the ticket at any price.² Further, it has been argued that ticket scalping provides a service to those who are not willing to purchase tickets directly from the promoter.³ A contrary view is that ticket scalping limits the number of reasonably priced tickets because professional ticket scalpers purchase such a large number of the tickets from the promoter and limit the ability of the public to purchase tickets at retail prices.⁴ Further, ticket scalping can lead to the sale of fraudulent tickets.⁵

There are no federal laws directly governing ticket resales, but several states prohibit the reselling of tickets for an amount in excess of the face price.⁶ At least sixteen states prohibit or regulate the resale of tickets: Arizona, Arkansas, California, Connecticut, Delaware, Florida, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, New Mexico, Ohio, Rhode Island and Wisconsin.⁷ Regulatory schemes include allowing resales for no more than face value, permitting resales for higher prices by licensed ticket brokers, or allowing resales for a specified amount above face value.⁸ In almost all instances where ticket scalping is prohibited or there is a resale without a license, the offense is a misdemeanor.⁹

Section 817.36, Florida Statutes.

Section 817.36, F.S., (Florida's "ticket scalping statute") was passed in 1945. Currently, s. 817.36, F.S., states that it is a second degree misdemeanor¹⁰ for anyone to offer for sale or sell tickets "for passage or accommodations on any common carrier" or tickets "for admission to sporting exhibitions, athletic contests, theaters, or any exhibition where an admission price is charged" for a price in excess of \$1 over the original retail price charged by the original seller. In regards to tickets "for passage or accommodations on common carriers", the prohibition does not apply to travel agencies that are required to pay state, county, and city occupational license taxes.¹¹ In regards to tickets "for admission to sporting exhibitions, athletic contests, theaters, or any exhibition where an admission price is charged", the prohibition applies to travel agencies unless they are registered sellers of travel pursuant

¹ Paul J. Criscuolo, *Reassessing the Ticket Scalping Dispute: The Application, Effects, and Criticisms of Current Anti-Scalping Legislation*, Seton Hall Journal of Sport Law, 5 SHJSL 189, 189 (1995).

² *Id.* at 189-90.

³ *Id.* at 191.

⁴ *Id.* at 192.

⁵ *Id.* at 192.

⁶ <http://www.ncsl.org/programs/lis/ticketscalplaws.htm>

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ A second degree misdemeanor is punishable by a maximum of 60 days in jail and a maximum fine of \$500. See ss. 775.082, 775.083, F.S.

¹¹ s. 817.36(1)(b), F.S.

to part XI of chapter 559, F.S., resell such tickets as part of travel packages, and are reselling such tickets on behalf of the original sellers.¹²

Although there is no express legislative intent in the statute to explain why the statute was enacted, the Fifth District Court of Appeal discussed the purpose of the “ticket scalping” statute in *State v. Sobieck*, 701 So.2d 96, 104 (Fla. 5th DCA 1997).

We think the statute attempts to regulate areas of legitimate state concern—public events and tourism. Its obvious goal is to protect the consuming public and event promoters from the economic harm done to them by persons who artificially corner the market for tickets to public events. By making an exception for sellers of travel, it seeks to promote tourism, and regulate the travel industry. Similar statutes in other states have been upheld by the state courts... [T]icket scalpers deprive consumers of a valuable service--the availability of low-cost tickets through box office sources. The effect on the ticket market by scalpers who buy up available tickets for resale is to lessen public opportunity to buy tickets at the lowest prices. Statutes like section 817.36 are designed to prevent unfair cornering of the market and limit opportunities to manipulate prices, both of which damage the general public and the promoters of public events.¹³

In regards to tickets to tickets for “passage or accommodations on any common carrier”, the bill increases the maximum amount above retail price for which such tickets may be resold from \$1 above the retail price charged by the original seller to 25% above the retail price charged by the original seller. As under current law, this prohibition will not apply to travel agencies.

In regards to tickets for admission to “sporting exhibitions, athletic contests, theaters, or any exhibition where an admission price is charged,” the bill increases the maximum amount above retail price for which such tickets may be resold from \$1 above the retail price charged by the original seller to 25% above the retail price charged by the original seller. The bill further provides that the above prohibition does not apply to tickets purchased through an electronic medium using a credit card or other electronic payment mechanism that offers full reimbursement for fraud, misrepresentation, or nonperformance, unless the ticket is for admission to a theme park, entertainment complex, or permanent exhibitions or recreational activities within such theme parks/entertainment complexes.¹⁴ The bill also provides that its provisions will not affect the application of chapter 212, relating to sales tax, to persons selling or reselling tickets for admission to sporting exhibitions, athletic contests, theaters, or any exhibition where an admission price is charged.

Section 559.9335, Florida Statutes.

Part XI of Chapter 559 relates to regulating sellers of travel. Currently, s. 559.9335, F.S., provides, with certain exceptions, that it is a violation of the chapter for a seller of travel to sell or market admissions tickets to theme parks or amusement parks, sporting events, concerts, theater productions, or other entertainment events, in excess of \$1 above the retail admission price charged by the original seller.¹⁵

¹² See s. 817.36(2)(b), F.S. The exemption for registered sellers of travelers was challenged on due process and equal protection ground in *State v. Sobieck*, 701 So.2d 96, 104 (Fla. 5th DCA 1997). However, court looked to the extensive requirements placed upon registered sellers of travel (e.g. they must be bonded and financially answerable to travelers injured by fraud, register annually with the state, provided extensive information concerning their business operations and agents, pay registration fees, keep records, etc...) and held that such heightened duties and responsibilities provided a legitimate basis for allowing them to sell tickets in a manner different from that allowed to the general public.

¹³ *State v. Sobieck*, 701 So.2d 96, 104 (Fla. 5th DCA 1997).

¹⁴ Section 509.013(9), F.S., defines “theme park or entertainment complex” as a complex comprised of at least 25 contiguous acres owned and controlled by the same business entity and which contains permanent exhibitions and a variety of recreational activities and has a minimum of 1 million visitors annually.

¹⁵ Section 559.9355, F.S., provides administrative penalties for violating the provisions of Chapter 559, including but not limited to, imposing fines and directing individuals to cease and desist certain activities.

The bill increases the amount above retail price for which such tickets may be resold from \$1 above the retail price charged by the original seller to 25% above the retail price charged by the original seller.

C. SECTION DIRECTORY:

Section 1. Amends s. 817.36, F.S., increasing the amount above retail price for which specified tickets may be resold without violating statute; providing an exception to the criminal penalty for certain tickets that are resold through a credit card or other electronic payment mechanism that offers reimbursement for fraud, misrepresentation, or nonperformance.

Section 2. Amends s. 559.9335, F.S., clarifying the application of s. 817.36, F.S., to licensed sellers of travel.

Section 3. This act takes effect upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See "Fiscal Comments".

2. Expenditures:

See "Fiscal Comments".

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Travel Agencies and private individuals may profit in that they will now be able to re-sell certain tickets at a price that is 25% more than the ticket's retail admission price. This could lead to the creation of businesses that resell tickets.

D. FISCAL COMMENTS:

In 2004, the Office of the State Court Administrator reported that only 145 cases were filed for violations of s. 817.36, F.S.¹⁶ The bill would likely reduce the number of filings under the statute and allow judges, prosecutors, and public defenders to devote time and resources to other cases.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution, because it is a criminal law.

¹⁶ The information on filings came from the clerks of the courts in every Florida county except for Brevard, Nassau, St. Lucie, and Seminole.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Subsection (c) (lines 51-58) states that “The provisions of paragraph (a) shall not apply to any transaction in which the ticket is purchased through an electronic medium using a credit card...”. This language makes it unclear whether the exemption applies to tickets *originally* purchased through an electronic medium or to tickets *resold* using an electronic medium. This could be clarified by stating the following, “The provisions of paragraph (a) shall not apply to any transaction in which the ticket is resold through an electronic medium using a credit card.”

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES